



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: July 9, 2009

Agenda Item No. 11: Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the County of Sierra.

INTRODUCTION: Sierra County (County), with a population of 3,555, is located in the heart of the northern section of the Sierra Nevada's, on Highway 49. The county seat is Downieville. In August 2008, the State Mining and Geology Board (SMGB) received a request for guidance from the United States Department of Agriculture, Forest Service (USFS), Yuba River Ranger District, in a dispute germane to pending litigation between the operator of a surface mining operation referred to as the Dredge III Mining Claim and Forest Service District. The request also noted that the County has not responded to the Forest Service request for action to be taken pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA).

A review of the current status for all surface mines located within the County's jurisdiction was performed and is summarized herein. The SMGB is considering whether a 45-Day Notice to Correct Deficiencies should be issued.

STATUTORY AUTHORITY: Pursuant to Public Resources Code (PRC) Sections 2774.4(a) and (b),

"If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of the lead agency under this chapter, except for permitting authority."

(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a)."



Executive Officer's Report

Consideration for issuance of a 45-Day Notice of Deficiencies is provided pursuant to PRC Section 2774(c):

“(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.”

BACKGROUND: In August 2008, the State Mining and Geology Board (SMGB) received a request for guidance from the United States Department of Agriculture, Forest Service (USFS), Yuba River Ranger District, in a dispute germane to pending litigation between the operator of a surface mining operation referred to as the Dredge III Mining Claim and Forest Service District. The request also noted that the County had not responded to the USFS request for appropriate action to be taken pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA).

The Department of Conservation Office of Mine Reclamation (OMR) was notified on August 14, 2008, and a multi-agency site visit performed on October 7, 2008.

Chronology	
Date	Activity
December 12, 2006	OMR informs Sierra County of its intent to review its SMARA program.
April 4, 2007	OMR notifies Sierra County of the results of its review of the County's SMARA program and request additional information.
August 7, 2008	Request from USFS received
August 14, 2008	Notification to Office of Mine Reclamation
October 7, 2008	Multi-agency site visit performed
November 2008 to January 2009	SMGB's Executive Officer reviewed SMARA database and mine files maintained by OMR
January 20, 2009	Correspondence from USFS to Mr. Brian Dries
March 12, 2009	Notice of Violation issued by Sierra County to Mr. Brian Dries and Mr. Jack Nixon

ANALYSIS: In review of the OMR SMARA database, materials produced from surface mining operations located in the County include sand and gravel, decomposed granite, gold (placer and lode) and silver. Based on 2007 information provided by the County, there are

10 surface mines situated within the jurisdiction of the County, of which six are active, two are idle, and two closed with no intent to resume operations.

A preliminary review of the current status for all surface mines located within the County's jurisdiction was performed. In particular, certain parameters indicative of overall SMARA lead agency performance were evaluated. These parameters reflect upon those minimal activities required by all SMARA lead agencies such as conduct of inspections at least once each calendar year, review and adjustment of financial assurance cost estimates, and enforcement actions. Also noted were substantial deviations from the approved reclamation plan, and those mines initially reported as idle that have since become abandoned, whether that was the operator's intent or not (i.e., no Interim Management Plan (IMP) in place). In addition, the average remediation cost per disturbed acre was evaluated to serve as a general indicator as to whether such costs are reasonable or otherwise significantly lower than amounts established elsewhere throughout the state.

SMARA Mine Inspections: Adequate inspection reports are the foundation upon which a determination for adjusting the financial assurance is made and how administrative and compliance/enforcement actions to be considered by the lead agency (County) are clearly identified. Pursuant to PRC Section 2774(b), SMARA requires that all surface mines be inspected at least once each calendar year. In addition, CCR Section 3504.5(f) of the SMGB's regulations state:

"Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9."

CCR Section 3504.5(g) also states *"The inspection report to the lead agency shall consist of the inspection form MRRC-1...and any other reports or documents prepared by the inspector or inspection team...The lead agency shall provide a copy of the completed inspection report along with the lead agency's statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection..."*

As reported in the SMGB's Information Report 2007-01, as of 2005, about 77 percent of the surface mines within the County's jurisdiction were inspected. As of 2007, not one surface mine within the County's jurisdiction had been inspected.

Financial Assurance Annual Review and Adjustment: Pursuant to PRC Section 2773.1(a)(3) SMARA requires that the financial assurance cost estimate (FACE) for each surface mining operation be reviewed and adjusted annually, as appropriate. As reported in the SMGB's Information Report 2007-01, as of 2005, about 23 percent of the financial assurances had been reviewed. As of 2007, not one financial assurance cost estimate was adjusted.

Reclamation Cost per Disturbed Acre: OMR has historically used \$5,000 per acre as a general and reasonable cost for reclamation of land disturbed by surface mining with a proposed end use as open space. As reported in the SMGB's Information Report 2007-01, as of 2005, the average cost per acre was \$612. For 2007, the average cost per acre County-wide is on the order of \$47 per acre.

Enforcement: A preliminary evaluation of enforcement related activities was reviewed in regards to commencement of reclamation in situations where a mine characterized as idle became abandoned, in situations where no IMP was submitted by the operator and subsequently approved by the County.

Idle Mines: As of 2007, two mines are noted as idle.

- Gardner's Point Mine (CA Mine ID #91-46-0004) is reported as idle as of 1997. Site currently considered abandoned. Reclamation has not commenced.
- Cole Cash Mine (CA Mine ID #91-46-0007) is reported as idle since 2002. Site currently considered abandoned. Reclamation has not commenced.

AB 3098 Status: OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under PRC Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates or other mined materials to state or local agencies. For OMR to place a mining operation on the AB 3098 List, the surface mining operation must meet all of the following conditions:

- The operation has an approved reclamation plan;
- The operation has an approved financial assurance;
- The operation has filed its annual report;

- The operation has paid its reporting fee; and
- The operation has had its annual inspection by the lead agency which reflects the operation is in full compliance with the law.

The surface mining operation may be on the AB 3098 List if it has a pending appeal with the SMGB regarding its reclamation plan or financial assurance, provided its appeal has not been pending for more than 180 days.

The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Not one surface mine site is listed on the AB 3098 list.

Comparison with Other Lead Agencies: As noted in the SMGB's Information Report 2007-01 pertaining to SMARA lead agency performance, it was noted, based on 2005 data, that statewide performance of lead agencies in the area of performing inspections of surface mine sites within their respective jurisdiction, at least once each calendar year, is moderate, with the overall quality of such inspections inferred to be poor. Lead agency performance in the annual review and adjustment of financial assurances was poor, averaging 29 percent compliance, with 91 percent of the lead agencies performing below 50 percent compliance. Furthermore, as of 2002, overall financial assurances were un-realistically low. Enforcement of SMARA in regard to enforcement of IMPs was deemed almost non-existent.

In regard to overall performance of the County as a SMARA lead agency in 2007 in comparison with other lead agencies, current evaluation indicates:

- The County is performing well below the state average in regards to inspections (zero percent of the sites within the County's jurisdiction are in compliance in comparison to the state average of 66-75 percent as of 2005).
- The County is performing significantly below the state average in regard to annual review and adjustment of financial assurances (zero percent of the sites within the County's jurisdiction in comparison to the state average of 29 percent).
- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports reveals low dollar amounts. This is reflective of inadequate inspections, and lack of review and adjustment of the financial assurance amount, on an annual basis.



FINDINGS: The following findings are offered:

- No inspections were performed by the County in 2007. The County is performing well below the state average in regards to inspections (zero percent of the sites within the County's jurisdiction are in compliance in comparison to the state average of 66-75 percent as of 2005).
- No adjustments of the financial assurance were performed by the County in 2007. The County is performing significantly below the state average in regard to annual review and adjustment of financial assurances (zero percent of the sites within the County's jurisdiction in comparison to the state average of 29 percent).
- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports reveals low dollar amounts. This is reflective of inadequate inspections, and lack of review and adjustment of the financial assurance amount.
- The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. No sites are noted on the AB 3098 list.

EXECUTIVE OFFICER'S RECOMMENDATION: A SMARA lead agency need only fail in one of the six conditions set forth pursuant to PRC Section 2774.4(a), for the SMGB to consider commencement of the administrative process toward assumption of the lead agency's SMARA responsibilities and obligations, excluding permitting authority. It is the Executive Officer's opinion that the County has not taken minimal steps in meeting its obligations and responsibilities as a lead agency pursuant to SMARA. Thus, based on review of the administrative record before the Executive Officer, it is recommended that the SMGB direct the Executive Officer to issue a 45-Day Notice of Deficiencies to the County.

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

[Should the SMGB determine that the County is making significant progress, and that no deficiencies and violations exist, the following motion can be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County is making a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the Board not consider issuance of a 45-Day Notice of Deficiencies.

[Or]

[Should the SMGB determine that the County is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion can be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County is making a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, but significant deficiencies may persist, and that the Executive Officer conduct a thorough review of mine inspection reports within the jurisdiction of Sierra County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.

[Or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make progress, the following motion can be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to Sierra County pursuant to Public Resources Code Section 2774.4(a)(c).

Respectfully submitted:

Stephen M. Testa
Executive Officer